

Rule Development Plan

Amendments to Chapter 173-224 WAC

Wastewater Discharge Permit Fees

Washington State Department of Ecology

Water Quality Program

Administrative Order Number 05-17

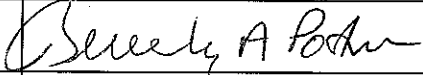
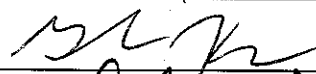
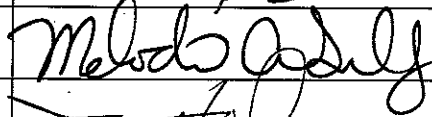
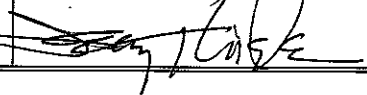
Approved by:	Signature:	Date:
Rule Writer		10/11/05
Public Information Officer		10/11/05
Program Manager		10/12/05
Agency Rules Coordinator		10/12/05

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Rule Development Plan

Wastewater Discharge Permit Fees

WAC 173-224

1. General Information

A. Need and Authority

Ecology is proposing to change an existing WAC. RCW 90.48.465 (Water Pollution Control), which requires the Department of Ecology (Ecology) to fund its Wastewater Discharge Permit Program through annual permit fees. Ecology is to create (by rule) a fee schedule for collecting expenses for issuing and administering wastewater discharge permits. Fee-eligible activities include: processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

Ecology is proposing to amend the Wastewater Discharge Permit Fee Regulation (Chapter 173-224 WAC) to increase annual permit fees for Fiscal Years 2007 and 2008, which will allow continued operation of the Wastewater Discharge Permit Fee Program.

B. Summary of Key Issues

The Water Quality Wastewater Discharge Fee Program has had its share of complex and challenging issues since its inception. Fee programs in general are not popular. Ecology is proposing to increase fees for all wastewater and stormwater permit holders to the maximum fiscal growth factor determinations made by the Governor's Office of Financial Management for both Fiscal Years 2007 and 2008. There are no other rule change issues under consideration at this time.

Legal Issues

Ron Lavigne has been assigned as the Assistant Attorney General to the Water Quality Program. He will review all proposed amendments to ensure compliance with RCW 90.48.465.

C. Advisory Groups

The Water Quality Program has a standing advisory group that provides input on all fee rule changes. The Water Quality Partnership consists of industrial permit holders, municipal permit holders, government entities, environmental groups, etc. This group was consulted early on in the process regarding various options for this rule making. It was decided after meeting with the Partnership to move forward with raising fees to the fiscal growth factor limits.

D. Additional Resources

Revision of the rule is part of the existing Water Quality Program staff's regular duties. Estimated time for staff on rulemaking is 5 FTE for one year. There will be an additional cost for printing and mailing various FOCUS sheets and copies of the proposed amendments to each permit holder as well as to interested parties. Costs of printing and mailing are estimated not to exceed \$5,000.00. Travel expenses for the public workshops and hearings are estimated at less than \$2,000.00.

E. Timeline

1) Planning and Assessment Phase

Task	Date
Begin Rule Development Plan	September/October 2005
Schedule Senior Management Team Rule Authorization Development (RAD) Briefing	September 21, 2005
Present rule changes to RAD	September 30, 2005
RAD approved by Director	September 30, 2005
Submit draft rule development plan to Rules Coordinator for review	October 14, 2005
Prepare CR101 Rules filing packet	October 17, 2005
Finalize rule development plan	October 13, 2005
Submit CR101 packet to Rule Coordinator for review	October 19, 2005
Submit CR101 for approval and signature to Program Manager	October 31, 2005
Rule Coordinator files CR101	November 2, 2005

2) Rule Drafting Phase

Task	Date
Submit proposed amendments to AG for review	November 2, 2005
Submit rule language to OTS	November 7, 2005
Prepare implementation plan	December 1, 2005
Schedule Proposed Rule (CR102) briefing with Deputy Director	December 19-23, 2005
Prepare CR102 filing packet	January 3, 2006
Submit CR102 filing packet to Rules Coordinator for review	January 9, 2006
Brief Deputy Director	January 9-13, 2006
Submit CR102 packet to Rules Coordinator for filing	January 18, 2006
Rules Coordinator files CR102	January 18, 2006

3) Public Comment/Written Objective Phase

Task	Date
Prepare hearing presentation materials and public notices	January 25, 2006
Prepare and mail news release and Focus sheet announcing workshops and public hearings	February 2, 2006

Task	Date
Rule published in State Register	February 1, 2006
Hold public workshops in conjunction with public hearings (Olympia, Yakima, Spokane)	March 6-8, 2006
Public comment cut-off date	March 22, 2006
Complete Concise Explanatory Statement	April 25, 2006
Finalize rule language	May 10, 2006
Prepare rule-making criteria document	May 15, 2006
Prepare CR103 filing packet	May 18, 2006
Submit CR103 packet to Rules Coordinator for review	May 22, 2006
Brief Director (if required) or submit CR103 for signature	May 23-30, 2006
Director signs rule	May 30, 2006
Rule Coordinator files rule CR103	May 30, 2006
Issue news release announcing rule adoption	June 6, 2006
Rule effective	July 1, 2006

2. Alternatives

A. Negotiated Rule-making

When the first fee regulation was adopted in 1988, Ecology used an Advisory Committee to help develop the structure of the fee schedule. Fee categories and subcategories were created with the assistance of the permit holders who would have their fees determined within those categories. Ecology has negotiated most of the contents of the fee regulation and continues to do so even at the present time.

The Water Quality Program currently has in place a Water Quality Partnership that provides guidance to the program on various issues, one of which concerns amendments to the permit fee regulation. This committee consists of industrial permit holders, municipal permit holders, government entities, environmental groups, etc. Any proposed changes will be discussed with the partnership and appropriate modifications made to the draft rule before being filed with the Code Revisers Office.

B. Pilot Rule-making

Pilot rule-making was considered but deemed inappropriate for this rule amendment due to the need for additional resources.

C. Other Alternatives

Other alternative methods of rule making were considered but deemed inappropriate for this rule because of lack of additional resources, the focused target audience, and the fact this is a revision to an existing rule.

3. Communication Strategy Outline

A. Topic/Issue

Ecology is proposing to increase annual permit fees for all wastewater/stormwater permit holders for fiscal years 2007 and 2008. Communicating this information to all interested parties is of critical importance to the Department to ensure an open rule amendment process which allows for public comment.

B. Communication Goals

To keep interested parties informed of the rule making process and allow for public input regarding the proposal.

C. Brief Background

The Department of Ecology amends the permit fee regulation every two years. This activity has occurred since its inception in 1988. Permit holders and other interested parties are kept apprised of the rule development process through direct mailings from the Department. The Permit Fee Web Page is also kept updated with the rule process as it unfolds.

D. Audiences

i. Intra-Agency

Development and implementation of the wastewater discharge permit fee program has historically been the responsibility of Ecology's Water Quality Program. The Water Quality Program has assumed lead status for the agency for the original rule adopted in 1988 and subsequent eleven fee rule amendments.

Several other Ecology programs share a relationship with the fee system. This relationship is largely one based on programs receiving and allocation of fee revenue receipt. In other words, since several Ecology programs share responsibility for implementing portions of the state's wastewater discharge permit program, they therefore, receive a portion of the fee revenue.

While other programs share a funding relationship with the fee system, they have not historically participated directly in the fee system design, fee rule development or fee system implementation. However, they have been kept apprised of proposed changes throughout the rule development processes.

The following is a list of various Ecology programs that will be involved in the development of the fee rule amendment process.

Office of Intergovernmental Relations – State law (RCW 90.48.465) requires Ecology to assess the impact of permit fees on small dischargers. This program will make the determination of whether or not the proposed changes require a small business economic impact statement to be developed and filed with the regulation. *Staff: Cathy Carruthers*

Solid Waste and Financial Assistance – Administers wastewater permits for all major industries in Washington State. This program receives revenue from the permit fee account to fund some of the administration of these permits. *Staff: Carol Kraege*

Financial Services – Provides centralized fiscal/accounting services, including timely maintenance of Ecology revenue and expenditure records. Ensures Ecology funds are received and disbursed in accordance with federal, state and Ecology policy, as well as the General Accepted Accounting Principles for governmental entities. Responsibilities include: cashiering functions and acting as liaison between the collection agency and Ecology. *Staff: Gary Zeiler*

Information Services – Responsible for maintenance and enhancement (if necessary) of the Billing and Revenue Tracking System. *Staff: Debbie Stewart*

Nuclear Waste Program – Responsible for the issuance and maintenance of wastewater permits on the Hanford Reservation. *Staff: Mike Wilson*

Agency Rules Coordinator – Provides general guidance and direction on the rule development process. *Staff: Jerry Thielen*

Regional Offices – Regional Office involvement in wastewater discharge permit fees is minimal because implementation and administration of the fee system is carried out by headquarters staff in the Water Quality Program. Regional Water Quality Program supervisors will be kept informed through periodic briefings to the Water Quality Program Management Team. In addition, regional office staff are invited to attend any of the workshops presented in their location.

ii. Inter-Agency

Other State and Federal Agencies

The following state agencies are fee-payers and will be directly notified of the proposed changes to the permit fee regulation:

- Department of Fish and Wildlife
- Department of Corrections
- Parks and Recreation Commission
- Department of Transportation
- Department of Social and Health Services
- Department of General Administration
- Department of Agriculture

The following federal agencies are fee-payers and will be directly notified of the proposed changes to the fee regulation:

- United States Department of Energy
- United States Navy

iii. Tribal

The Environmental Protection Agency (EPA) is the permitting authority for dischargers located on tribal lands.

iv. Regulated Community

Those affected by this rule amendment will be notified by direct mailing of the proposed amendments. Ecology will not file the CR102 until after presenting the proposed amendments to the Water Quality Partnership for review. Comments will be reviewed and any appropriate changes or modifications will be made prior to submittal of the CR102 to the Code Reviser.

v. Environmental Community

The environmental organizations listed on the Water Quality Program's interested parties mailing list will be advised, through direct mailings, of proposed changes to the permit fee rule and invited to comment and participate. The environmental community is also represented on the Permit Partnership.

vi. General Public

The general public will be given an opportunity to comment and participate via the workshops and hearings. A notice of the workshops and hearings will be placed in the Ecology public events calendar which is available to a mailing list, sent to the news media, and posted on the Internet. Ecology will also prepare and mail out a news release announcing the public hearings two weeks prior to them being held.

4. Potential Products and Activities

Public Involvement Strategy Worksheet

Rule Product	Product Due Date	Audience	Objective	Action	Action Due Date	Staff Resources
Maintain Fee Rule Web Page	Ongoing	Permit Holders Interested Parties	Keep audiences informed of rule development process	Post all rule development actions	Ongoing	Shirley Rollins
Rule Development Plan	10/10/2005	Permit Holders Interested Parties	Describe the FY2005/2008 fee amendment process	Write rule plan	10/2005	Bev Poston
CR101	10/1/2005	Permit Holders Interested Parties	Inform of Ecology's intent to amend WAC 173-224	Write and submit CR101 to Rules Coordinator	10/2005	Bev Poston
WQ Partnership Meeting	9/2005	Permit Holders Interested Parties	Examine and discuss potential changes to WAC 173-224. Solicit comments	Incorporate comments received into final proposed changes.	9/2005	Nancy Winters Bev Poston
CR102	1/18/2006	Permit Holders Interested Parties	File proposed changes with the Code Reviser; solicit comments.	Published in State Register	1/2006	Bev Poston
FOCUS Sheet	2/2/2006	Permit Holders Interested Parties	Announce workshops and formal public hearings on proposed changes.	Send direct mailing to permit holders and interested parties.	1/2006	Bev Poston Glen Kuper
News Release	2/20/2006	Potential permit holders and interested parties	Announce public workshops and hearings		2/2006	Glen Kuper
Public Workshops and Hearings.	3/6-8/2006	Permit Holders Interested Parties	Explain final proposed changes.	Receive public testimony on proposed rule changes.	3/6-22/2006	Bev Poston
Concise Explanatory Statement	4/25/2006	All who submitted public testimony and those who request it	Formally respond to comments received both oral and written regarding the proposed changes.	Prepare document for mailing and posting on the Web page.	4/2006	Bev Poston
Announce Adoption of Fee Rule Amendments	6/2006	News Release	Highlight adopted changes to the fee rule			Glen Kuper

Appendix A. RCW 90.48.465 – Wastewater Discharge Permit Fees

RCW 90.48.465 Water discharge fees. (1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule within one year of March 1, 1989, and thereafter the fee schedule shall be adjusted no more often than every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(1) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for All domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system. The department shall adopt by rule a schedule of credits for any municipality engaging in a comprehensive monitoring program beyond the requirements imposed by the department, with the credits available for five years from March 1, 1989, and with the total amount of all credits not to exceed fifty thousand dollars in the five-year period.

(2) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.465 are not recoverable by the department.

(3) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for storm water runoff and shall provide appropriate adjustment.

(4) The fee for an individual permit issued for a dairy farm as defined under chapter 90.62 RCW shall be fifty cents per animal unit up to one thousand one hundred sixty-seven dollars for fiscal year 1998 and one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to eight hundred seventeen dollars for fiscal year 1998 and eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter 43.135 RCW.

(5) The fee for a general permit or an individual permit developed solely as a result of the federal court of appeals decision in *Headwaters, Inc. v. Talent Irrigation District*, 243 F. 3rd 526 (9th Cir. 2001) is limited, until June 30, 2003, to a maximum of three hundred dollars. Such a permit is required only, and as long as, the interpretation of this court decision is not overturned or modified by future court rulings, administrative rule making, or clarification of scope by the United States environmental protection agency or legislative action. In such a case the department shall take appropriate action to rescind or modify these permits.

(6) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

(7) The department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.